



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF VAJNAI v. HUNGARY

(Application no. 6061/10)

JUDGMENT

STRASBOURG

23 September 2014

This judgment is final but it may be subject to editorial revision.

In the case of Vajnai v. Hungary,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Helen Keller, *President*,

András Sajó,

Robert Spano, *judges*,

and Abel Campos, *Deputy Section Registrar*,

Having deliberated in private on 2 September 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 6061/10) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Mr Attila Vajnai (“the applicant”), on 23 January 2010.

2. The applicant was represented by Mr G. Magyar, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

3. The applicant complained under Article 10 of the Convention that a police measure against him for wearing a red star was a breach of his right to freedom of expression.

4. On 17 October 2013 the application was communicated to the Government.

5. The Government objected to the examination of the application by a Committee. After having considered the Government’s objection, the Court rejects it.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

6. The applicant was born in 1963 and lives in Budapest.

7. On 18 May 2009 the applicant, a left-wing politician, participated in a peaceful demonstration wearing a five-pointed red star on his jacket. A police patrol which was present called on the applicant to remove the star, which was then confiscated. The applicant’s complaint to the Head of National Police was to no avail.

8. Subsequently, he challenged the measure in court.

9. On 29 June 2010 the Budapest Regional Court dismissed his action. The court held that the display of the red star contravened section 269/B of the Criminal Code and consequently its confiscation was justified under sections 115(1) and 151(1) of the Code of Criminal Procedure.

10. In review proceedings, the Supreme Court upheld the Regional Court's decision on 8 June 2011, holding that the police measure had been lawful, despite the judgment of the European Court of Human Rights in the case of *Vajnai v. Hungary* (no. 33629/06, ECHR 2008), whose application in the circumstances had been no task of the police officers present on the premises.

11. The applicant incurred altogether 1,115 euros in legal costs.

THE LAW

12. The applicant complained that the police measure infringed his rights under Article 10, just like in the *Vajnai* case (cited above).

13. The Government submitted that the present case was different from *Vajnai* – in that the issue here was whether or not the police officers had the duty or possibility to carry out the contextual scrutiny of the applicant's conduct, as required by the *Vajnai* judgment. In the Government's view, the police measure was lawful and justified, because the officers had acted under the reasonable assumption that the applicant's conduct had constituted an offence under section 269/B of the Criminal Code, still prohibiting the display of a red star.

14. The applicant contested these views, making reference to the *Vajnai* judgment.

15. The Court recalls that it has already found that the prosecution of the applicant for displaying the red star was an admissible complaint and constituted a violation of Article 10 (see *Vajnai*, cited above). The impugned provision of the national law was the same as in the present case and the circumstances of the interference virtually identical. Consequently, the Court finds no reason to depart from its earlier conclusion in the matter.

It follows that there has been a violation of Article 10 of the Convention.

16. Relying on Article 41 of the Convention, the applicant claimed 1,115 euros (EUR) in respect of pecuniary damage (incurred as legal costs on the domestic level while attempting to prevent the violation, see paragraph 11 above) and EUR 2,000 in respect of non-pecuniary damage.

The Government disputed these claims.

The Court awards the applicant the entirety of the legal costs and expenses incurred in the domestic proceedings, that is, EUR 1,115 in pecuniary damage. Moreover, it considers that the applicant must have

suffered some non-pecuniary damage and awards him the full sum claimed under this head, that is, EUR 2,000.

17. The applicant also claimed EUR 1,600 plus VAT for the costs and expenses incurred before the Court. This figure corresponds to eight hours of legal work billable by his lawyer at an hourly rate of EUR 200 plus VAT.

18. The Government contested the claim.

19. Regard being had to the documents in its possession and to its case-law, the Court considers that the sum claimed should be awarded in full.

20. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 1,115 (one thousand one hundred and fifteen euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 23 September 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Deputy Registrar

Helen Keller
President